Supreme Court, U.S.
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No. 99-1674

IN THE

Supreme Court of the United States

MARTIN VANDEL,

Petitioner,

v.

STANDARD MOTOR PRODUCTS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a properly granted motion for summary judgment violates the Seventh Amendment right of trial by jury?

CORPORATE DISCLOSURE STATEMENT

Respondent, Standard Motor Products, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

Petitioner Martin Vandel's ("Vandel") contentions that he performed satisfactorily at Respondent Standard Motor Products, Inc. ("Standard Motor") until the last year of his employment there; that he was given inconsistent reasons for his termination; and that his complaints were ignored are not correct and are not supported by the record. As set forth below, and as reflected in the lower court decisions, the uncontroverted record demonstrates that four different supervisors over a three and one-half year period documented problems with Vandel's interpersonal skills; that he was warned repeatedly that his behavior could lead to his termination; that he was counseled on numerous occasions on what was expected of him; and that his complaints did not go ignored. His complaints were thoroughly investigated, and found to be without merit. Standard Motor meticulously documented the reasons for Vandel's termination, and the affidavits he submitted in opposition to Standard Motor's motion for summary judgment did not contravene the specific facts upon which its decision to terminate him was based.

1992: Vandel's First Written Warning

Vandel was hired as a Tool Design Engineer by the EIS Brake Parts Division ("EIS") of Standard Motor on April 4, 1988, at the age of 38. (Jt. App. A29.[1]) At the time he was hired, Vandel reported to Frank Genovese ("Genovese"), the Tool Engineering Manager, who in turn reported to Joe Gordon ("Gordon"), Manager of Engineering. (Jt. App. A68-69.) Vandel received his first written warning from Genovese in October of 1992. Genovese informed Vandel

1. Citations to Jt. App. are to the Joint Appendix filed in the United States Court of Appeals for the Second Circuit.

in a written memorandum at that time that: "Your attitude and cooperation have been far removed from the team effort that is so essential in maintaining consistency in our manufacturing process which is ultimately the responsibility of everyone in manufacturing support." (Jt. App. A35.) Among other things, Genovese noted that Vandel resisted the performance of tasks he deemed "menial"; failed to respect authority; and established and worked on his own schedule. (*Id.*) After describing a specific incident which left Genovese "no choice but to take disciplinary action," Genovese concluded: "If your attitude and cooperation does not improve *immediately*, my only course of action will be a request for termination." (*Id.*, emphasis in original.) Copies of this October 6, 1992 memorandum, documenting the seriousness of Vandel's interpersonal problems and the potential ramifications, were sent to Eric McAlexander ("McAlexander"), the Plant Manager, and John Geoffrion, the Personnel Manager at that time. (*Id.*)

1993: Vandel's Supervisor Files Written Complaint Regarding Vandel's Behavior; Vandel's Performance Review Documents Deficient Interpersonal Skills

Despite the fact that Vandel was specifically informed by Genovese that he had to improve his interpersonal skills or face termination, problems with Vandel's interpersonal skills continued. In 1993, Genovese sent a memorandum to McAlexander, which begins: "Jack Anderson [the Tool Room Supervisor] and I can no longer tolerate Martin's behavior and attitude." (Jt. App. A55.) Again, the complaints referred to Vandel's insubordination, refusal to follow instructions and insistence on setting his own schedule. (*Id.*) The problems that Genovese was having with Vandel's interpersonal skills were reflected in the evaluation Genovese

prepared for Vandel in 1993. (Jt. App. A36-39.) In it, Vandel received low ratings for human relations/communications, leadership, cooperation and attitude. (Jt. App. A38.) Vandel was so dissatisfied with this review that he refused to sign it, and requested that it be prepared by someone else. (Jt. App. A40.)

To accommodate Vandel, both McAlexander and Gordon prepared written evaluations of Vandel's performance in 1993. (Jt. App. A40-42.) Significantly, both individuals reiterated Genovese's sentiments regarding Vandel's shortcomings in the area of interpersonal relations. Gordon identified "interpersonal skills" and "working well with others whom he considers to have less technical talent" as areas which Vandel should work on. (Jt. App. A41.) McAlexander elaborated on this point, stating:

> [Vandel's] ability to listen to and work with others of lesser technical skills has presented problems. Martin's pride in his accomplishments does not allow him to accept ideas for possible improvements in his design by others. He also does not allow him to be questioned as to why he chose a particular direction. Because of this, he does not function well in a team environment. * * * In addition, Martin sees himself as being "above" certain tasks such as detailing. While I totally agree that Martin's skills are far beyond that of drafting, at times it is critical in order for us to be successful.

(Jt. App. A42.) Notably, in a follow-up memorandum to McAlexander, Vandel actually admitted to a lack of cooperation on his own part, and stated his intention to

cooperate in the future in the "best possible manner." (Jt. App. A58.) Vandel did not claim that his difficulties at this time had anything to do with his age or national origin.

1994: Another Written Warning; New Supervisor Documents the Same Behavioral Concerns

In 1994, Genovese left the employ of Standard Motor and John Wolf ("Wolf") became Vandel's supervisor. (Jt. App. A29.) By the end of 1994, Wolf was experiencing the same problems with Vandel that Genovese had and by December, Wolf was asking senior management for help with Vandel. (Jt. App. A50.) In a letter to Mike Paulus ("Paulus"), the General Operations Manager at the Berlin facility, Wolf detailed the problems he was having with Vandel. (*Id.*) Wolf cited Vandel's lack of support of the master cylinder department and Vandel's assertion that he could not properly support the floor without "complete authority over the tool room, tool & fixture design & equipment on the floor." (*Id.*) When told by Wolf that Vandel could do anything he wanted so long as he could justify it, Vandel "blew up" saying: "he did not & never had to justify anything he did, that [Wolf] was questioning his experience, professionalism and knowledge." (*Id.*) Wolf concluded:

> Because of Martin's inability to work as a team member he has alienated others who have to work with him. J. Anderson & B. Pastore typically end up doing the floor trouble shooting & problem solving. (They do not like to admit this because they do not want to get anybody in trouble).
>
> I have had it with Martin & his attitude. I & many others do not like to or even want to work with

> him. He is very disruptive. He spends a lot of time lately posturing & trying to get people to support him. We asked about this, his standard answer is he walks around & talks to people while thinking — this is how he creates.
>
> Can you help me out here & talk to Lenny to find out how to get rid of him & get someone in here that will work with us & be more of a team player.

(*Id.*)

Previously, on (or about) December 6, 1994, a meeting was held between Vandel, Paulus and Lenard Friedman ("Friedman"), the Director of Personnel at this facility, to discuss issues Vandel raised in a memorandum to Friedman concerning problems Vandel was purportedly having with Wolf. (Jt. App. A51 and A62-63.) During the meeting, Vandel was counseled on his interpersonal relations. He was told that he has to "learn to put heads together instead of butting heads"; he must be a team player and must sell his boss on what he wants to do; and that "open warfare can't be tolerated." (Jt. App. A51.) Vandel was also reminded that Wolf was his boss and that if Vandel could not get along with Wolf and respect Wolf's authority, Standard Motor would be forced to terminate Vandel. (*Id.*)

1995: Vandel's Interpersonal Issues Continue and Result in his Discharge

In light of the strained relationship between Vandel and Wolf, Paulus participated in Vandel's performance review in April 1995. (Jt. App. A32 and A53.) Vandel was informed that although his technical skills were strong, his

interpersonal skills were still severely lacking. (*Id.*) Vandel was told by Paulus that he was simply not working as a team player as necessitated by Standard Motor's business. (*Id.*) Paulus and Wolf discussed the reorganization of Vandel's work area. Vandel was told that the new organization placed a premium on a person's ability to work as a team member and that Vandel's abilities in this area were lacking. (*Id.*)

Paulus also discussed with Vandel the fact that complaints concerning his effort and attitude came not only from Wolf, but from all levels in the company. (Jt. App. A53.) Paulus reminded Vandel that there were documented difficulties with his previous supervisor, Frank Genovese, as well as the previous Operations Manager, Eric McAlexander. (Jt. App. A54.) Paulus noted that a recurring theme had been heard regarding Vandel, namely, that "Martin is very smart but I can't work with him." (Jt. App. A53.) Other problems which were noted in his April 1995 performance review included the support that Vandel was giving (or not giving) on the shop floor; his troubleshooting on the shop floor; and his resistance to working with a team. (Jt. App. A43-44.) Additionally, in early 1995, Vandel had been removed from a working group due to his inability to get along with the other team members and his failure to attend meetings. (Jt. App. A48.) In concluding his written evaluation on April 12, 1995, Wolf stated:

> Martin's attitude has improved somewhat since he was told that I am his boss and he should work with me. But, he is still not convinced he should have to work in teams with others and take their suggestions and comments.
>
> Martin is still Martin.

(*Id.*)

As he had done with Genovese's review in 1993, Vandel challenged the performance review given to him. This time, however, Vandel claimed that Wolf was biased against him, and stated that he had "documentation" to support his allegation that Wolf discriminated against Vandel "because he [Vandel] is not a native American." (Jt. App. A33 and A53.) Paulus advised Vandel to submit any such documentation, and told him Standard Motor would not tolerate discrimination in any form. (*Id.*) No such documentation was ever submitted to Standard Motor. (Jt. App. A33.) Vandel did not accuse Wolf or anyone else at Standard Motor of discriminating against Vandel on the basis of his age at any time during his employment at Standard Motor. (*Id.*)

Ultimately, the problems with Vandel reached the point where Vandel was no longer effective in his position. (Jt. App. A31.) At his deposition, Wolf summarized the problems with Vandel:

> It was becoming increasingly difficult to get Martin to play along with everybody, work as a group. I was spending the majority of my time managing him and not the rest of the department. And I had like — at the time, there was like eight other people that I was dealing with, plus we had a couple of big projects in the works. And he was just — every time I tried to do something with him, it was like I was persecuting him, so it became — it got to the point it was hampering my ability and our department's ability to service the production on the shop floor, and that's our primary concern.

(Jt. App. A109.)

The problems with Vandel had been on-going for some three plus years, and had continued through a change in supervisors. Vandel was informed throughout this period that his interpersonal skills were lacking and that if he wanted to continue in the employ of Standard Motor he must learn to work as part of a team. Vandel did not improve his interpersonal skills or attitude and as a result his performance did not meet Standard Motor's legitimate expectations. Thus, Standard Motors decided in April 1995 that Vandel's behavior could no longer be tolerated. (Jt. App. A31-32.) Vandel was terminated owing to the numerous problems associated with his interpersonal skills, including his (1) failure to get along with his fellow employees; (2) failure to get along with his supervisor, John Wolf; (3) resistance to authority; (4) inability to work on a team; and (5) being difficult to manage overall. (Jt. App. A32.)

After His Termination from Standard Motor Vandel Files A Claim With the Connecticut Commission on Human Rights and Opportunities

After being terminated by Standard Motor in July 1995, Vandel filed a complaint with the Connecticut Commission on Human Rights and Opportunities (the "CHRO"). The CHRO investigated Vandel's claims that Standard Motor had terminated his employment because of his age and nationality, and determined that there was no evidence to support these claims. On October 27, 1995, the Commission issued a Notice of Dismissal stating:

> [T]here is no reasonable possibility that further investigation will result in a finding of reasonable cause inasmuch as it was determined that there is no evidence to indicate that you were harassed or

> terminated due to your national origin or age. The respondent has provided evidence to indicate that you were difficult to manage and had problems dealing with authority and had problems getting along with your supervisors and coworkers. . . . You did not provide any additional evidence which might refute the response.

(Jt. App. A172.)

Vandel subsequently filed an action in the United States District Court for the District of Connecticut, purportedly asserting claims for discrimination based upon national origin under Title VII, 42 U.S.C. § 2000e, *et seq.* and based upon his age under the Age Discrimination and Employment Act, 29 U.S.C. § 621, *et seq.* ("ADEA"). Following extensive discovery, Standard Motor filed a motion for summary judgment on June 1, 1998, asserting, *inter alia*, that there is no genuine issue concerning the fact that it had a legitimate, nondiscriminatory reason for terminating Vandel's employment. After affording Vandel a full and fair opportunity to submit whatever evidence he had in support of his claims, the District Court granted summary judgment in favor of Standard Motor on May 3, 1999. (Vandel's Petition for Writ of Certiorari ("Vandel's Petition") at A7-26.) Vandel filed his appeal from this judgment on May 28, 1999. On December 21, 1999, the United States Court of Appeals for the Second Circuit unanimously affirmed the entry of summary judgment against Vandel on the grounds that he failed to produce evidence on which a rational factfinder could reasonably conclude that Standard Motor's proffered reason for Vandel's termination was pretextual. (Vandel's Petition at A2-6.)

SUMMARY OF THE ARGUMENT

None of the factors which would warrant review by this Court are present in this case. This case does not present an issue on which lower courts are in conflict, or an important question of federal law which is unsettled. The law applied by the lower courts in this case is well settled. First, it is well settled that granting summary judgment under Rule 56 of the Federal Rules of Civil Procedure does not violate the Seventh Amendment's right of trial by jury. (Point I below.) Second, there is no question that summary judgment was properly entered in this case. (Point II below.)

Three different tribunals separately concluded that Vandel failed to produce evidence to support his purported discrimination claims. First, the Connecticut Commission on Human Rights and Opportunities dismissed his administrative complaint during its "Merit Assessment," concluding: "there is no reasonable possibility that further investigation will result in a finding of reasonable cause in as much as it was determined that there is no evidence to indicate that you were harassed or terminated due to your national origin or age." (Jt. App. A172-73.) Next, a Senior United States District Court Judge granted summary judgment against Vandel on his purported age and national origin discrimination claims, concluding that he had not produced sufficient evidence to establish a *prima facie* case. (Vandel's Petition at A7-26.) Lastly, three judges of the United States Court of Appeals for the Second Circuit unanimously concluded that even if Vandel had produced sufficient evidence to establish a *prima facie* case of national origin and age discrimination, he failed to produce sufficient evidence upon which a reasonable fact finder could conclude that the legitimate, nondiscriminatory reason proffered by

Standard Motor for his termination was pretextual, and that unlawful discrimination was the true reason for his discharge. (Vandel's Petition at A2-6.)

Vandel's petition for writ of certiorari is replete with misstatements of fact and the record. Contrary to the assertions contained in his petition, Vandel did not perform satisfactorily until his last year of employment. There is also no evidence anywhere in the record to support Vandel's assertion that anyone was instructed to "review employees in regards to their age and ethnicity" in 1993. (*Compare* Vandel's Petition at 4.) Contrary to Vandel's assertions, he did not submit any competent evidence in opposition to the motion for summary judgment to contravene the specific facts upon which the decision to terminate him was based.

REASONS FOR DENYING THE WRIT

I. A Properly Granted Summary Judgment Motion Does Not Violate The Seventh Amendment Right Of Trial By Jury.

Nearly 100 years ago, this Court decided that a procedural device which allows a court to direct judgment for a party when there is no issue of fact in question does not violate the Seventh Amendment right of trial by jury. *Fidelity & Deposit of Maryland v. United States*, 187 U.S. 315 (1902). It is equally well settled that a properly granted summary judgment motion does not violate the Seventh Amendment. *See, e.g., United States v. Stangland*, 242 F.2d 843, 848 (7th Cir. 1957) (Surely the granting of a motion for summary judgment where there is no genuine issue of fact is not a denial of the right to trial be (sic) jury guaranteed by the Seventh Amendment.); *Shore v. Parklane Hosiery*

Co., Inc., 565 F.2d 815, 819 (2d Cir. 1977) (Where no genuine issue of material fact exists, the Court may, without violating Seventh Amendment Rights, grant summary judgment pursuant to Rule 56.)

As the record clearly demonstrates and as both the District Court and the Court of Appeals found, Vandel has failed to show that there are any material issues of fact in controversy. As such, the granting of summary judgment did not deny Vandel his Seventh Amendment right of trial by jury because there is nothing for a jury to determine. *Parklane*, at 819. Therefore, Vandel's argument that the granting of summary judgment in this matter violated his Seventh Amendment right of trial by jury should be rejected, and his petition for writ of certiorari should be denied.

II. Summary Judgment Was Properly Granted.

A. The Standard for Summary Judgment

This Court has held that "[s]ummary judgment is to be properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which were designed 'to secure the just, speedy and inexpensive determination of every action.' " *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (citations omitted). In *Celotex*, this Court stated:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Id., at 322. Where, as here, there is no evidence in support of plaintiff's specious discrimination claims, defendant is entitled to judgment as a matter of law. *Id.*, at 325.

Once a motion for summary judgment is properly made and supported, the burden shifts to the nonmoving party to set forth specific facts showing there is a genuine issue for trial. The nonmoving party cannot defeat a motion for summary judgment by "offering purely conclusory allegations of discrimination." *Meiri v. Dacon*, 759 F.2d 989, 998 (2d Cir.), *cert. denied*, 474 U.S. 829 (1985). It must set forth specific facts with affidavits, depositions, interrogatories or other evidence to show a genuine issue for trial. *Celotex*, 477 U.S. at 324; Fed. R. Civ. Pro. 56(e). Moreover, disputes of fact which do not affect the outcome will not defeat a properly supported motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). These summary judgment principles apply equally to employment discrimination cases. *McLee v. Chrysler Corp.*, 109 F.3d 130, 135 (2d Cir. 1997); *Holt v. KMI-Continental Group, Inc.*, 95 F.3d 123, 130 (2d Cir. 1996), *cert. denied*, 520 U.S. 1228 (1997); *Woroski v. Nashua Corp.*, 31 F.3d 105, 108 (2d Cir. 1994); *Smith v. American Express Co.*, 853 F.2d 151, 155 (2d Cir. 1988). As the Courts below properly held, Vandel has not, and cannot set forth any concrete and specific facts showing there is a genuine issue for trial and summary judgment was properly granted.

B. Vandel Did Not Establish A *Prima Facie* Case of Discrimination.

It is well settled that in order to make out a *prima facie* case of discrimination under Title VII, a plaintiff must show: (1) That [he] is a member of a protected class; (2) that [he]

was qualified for the position; (3) that [he] experienced an adverse employment action; (4) under circumstances giving rise to an inference of discrimination. *Brennan v. Metropolitan Opera Assoc.*, 192 F.3d 310, 316 (2d Cir. 1994), *citing McDonnel Douglas Corp. v. Green*, 411 U.S. 792 (1973). These factors also apply in determining whether a plaintiff has stated a claim under the ADEA. As the District Court found, and as the record clearly shows, Vandel could not make out a *prima facie* case of discrimination. (Vandel's Petition at A22.)

C. Vandel Was Not Qualified For The Position.

As the record in this case demonstrates, Vandel began having problems at Standard Motor in 1992 due to his poor interpersonal skills and inability to work with others. (*See, e.g.*, Jt. App. A29, A41, and A42.) While it is true that Vandel had the technical expertise to perform his job functions, as the District Court pointed out, it "takes more than technical expertise to meet the legitimate expectations of an employer." (Vandel's Petition at A22.) Because Vandel had serious problems following instructions and working with others, he was not qualified for a position which required team work and collaboration with fellow employees.

D. Assuming Arguendo That Vandel Made Out A *Prima Facie* Case, He Failed To Present Evidence Controverting The Legitimate Non-Discriminatory Reasons Put Forth By Standard Motor For His Termination.

If Vandel had made out a *prima facie* case of discrimination, the burden would have shifted to Standard Motor to proffer a non-discriminatory reason(s) for Vandel's

termination. Once Standard Motor satisfied this burden, the burden shifted back to Vandel to come forward with evidence tending to show that the non-discriminatory reasons proffered by Standard Motor were pretextual, and that the true motivation for his termination was unlawful discrimination. *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993); *Brennan v. Metropolitan Opera Assoc.*, 192 F.3d 310, 317 (2d Cir. 1999) (If the employer meets its burden of production, the inference of discrimination raised by the *prima facie* case drops out and the plaintiff must prove by a preponderance of the evidence that the employer's proffered reason is merely a pretext for discrimination.).

In upholding the District Court's grant of summary judgment, the Court of Appeals reasoned that even if Vandel had established a *prima facie* case of discrimination, he failed to proffer any evidence tending to show that the non-discriminatory reasons for his termination offered by Standard Motor were pre-textual. In his petition, Vandel argues that he did present evidence of pre-text and questions how he was able to function "so well during the first six years of my employment at [Standard Motor]. . . ." (Vandel's Petition at 15). As the record demonstrates, Standard Motor's problems with Vandel began as early as 1992, and continued through a change in supervisors up until Vandel's termination in 1995. Vandel's assertions that he was terminated "after this one year period of unmanageability" (Vandel's Petition at 15) is not true and not supported by the record. As the Court of Appeals found, "he [Vandel] has not presented evidence from which a fact-finder could reasonably conclude that Standard Motor Products' reasons for plaintiff's termination — his interpersonal difficulties — was pretextual and that the real reason was discrimination." (Vandel's Petition at A4.) As such, summary judgment is appropriate in this case.

CONCLUSION

The proper granting of a motion for summary judgment does not violate the Seventh Amendment right of trial by jury. Because the motion for summary judgment was properly granted in this case, Vandel's petition for a writ of certiorari should be denied.

Respectfully submitted,

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